Douglas Aircraft Company, a Component of McDonnell Douglas Corporation *and* Joyce Mills. Case 21–CA–27800

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On February 18, 1992, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited exceptions, a brief in support of the judge's decision, and an answering brief to the Respondent's exceptions. The Respondent filed a reply brief in support of its exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Douglas Aircraft Company, a component of McDonnell Douglas Corporation, Long Beach, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Offer Joyce Mills immediate and full reinstatement to the position of MD-11 program electrical installer, dismissing, if necessary, anyone who may have been hired or assigned to that position on or after October 24, 1990, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole with interest for any loss of earnings and other benefits she may have suffered as a result of her termination, or of any other unfair labor practices directed against her on or after May 22, 1990, in the manner set forth in the remedy section of the judge's decision, as modified.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent has excepted to the judge's drawing an adverse inference from the Respondent's failure to call certain witnesses, with no prior notice to the Respondent. The Respondent moves, in the alternative, that this case be remanded to the judge so that witnesses whose absence the judge has deemed to be critical can be called. The Respondent argues that considerations of fairness demand prior notice, analogizing this situation to judicial notice where such prior notice to the parties is required. We find that unlike judicial notice, prior notification that an adverse inference may be drawn from the failure to call witnesses is not required. The adverse inference rule is well known and the parties should be aware of the circumstances under which it may be used. See *International Automated Machines*, 285 NLRB 1122, 1123 (1987) (''familiar rule . . . that when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge''). We find no merit to the exception and, because we find that the Respondent was not unfairly prejudiced by the lack of prior notification, we deny the Respondent's motion to remand.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Further, to the extent that the Respondent may be alleging bias on the part of the judge, we have carefully examined the record and find no basis for such a finding.

In its brief in support of exceptions, the Respondent alleges that the judge's decision is ''completely one-sided, and thus totally inconsistent with his *own* initial evaluation'' of the case made ''at the end of the hearing, when the demeanor of all of the witnesses was freshest in the ALJ's mind.'' In support of this allegation, the Respondent quotes portions of a statement made by the judge at the hearing indicating that at that point the judge deemed the case to be evenly balanced. As pointed out by the General Counsel in his answering brief, however, the Respondent's quotation omits the critical phrase, ''I'm not even really considering credibility.'' Thus, the judge's comments stating his impression of the ''technicalities . . . the legal requirements'' do not support the Respondent's argument that the credibility resolutions in the judge's decision are inconsistent with his previous impressions of the demeanor of the witnesses.

The judge found that the events leading up to employee Joyce Mills' July 31, 1990 decision-making leave occurred on July 30. The Respondent's disciplinary document dated July 31 states that the events occurred on July 31. We find it unnecessary to resolve this discrepancy as it does not affect the result.

In sec. III,C,3 of his decision, the judge inadvertently named Tammy Syphax rather than Linda Carter as the employee entering the restroom after Mills on August 3. We correct this error.

[3] The judge inadvertently omitted lost benefits from his make-whole remedy. We shall modify the judge's recommended Order and shall substitute a new notice to employees to provide that the Respondent shall make Mills whole not only for lost earnings but also for other benefits.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT subject any employee to disciplinary layoffs, decision-making leaves, pretermination advisory board proceedings, or discharge because he/she participates in the investigation of unfair labor practice charges or because he/she gives testimony under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Joyce Mills immediate and full reinstatement to the position of MD-11 program electrical installer, dismissing, if necessary, anyone who may have been hired or assigned to perform the work which she had been performing prior to October 24, 1990, when we terminated her, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and we will make Mills whole with interest for any loss of earnings or other benefits she may have suffered as a result of her termination, or any other unfair labor practices directed against her on or after May 22, 1990.

WE WILL remove from our files any reference to the disciplinary actions imposed against Joyce Mills on or after May 1, 1990, including her October 24, 1990 termination, and notify her in writing that this has been done and that the discharge and disciplinary actions will not be used against her in any way.

DOUGLAS AIRCRAFT COMPANY, A COMPONENT OF MCDONNELL DOUGLAS CORPORATION

Neil A. Warheit, for the General Counsel.
Catherine H. Helm (Irell & Manella) and *Jack P. Lipton*, of Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Los Angeles, California, on April 9 through 12, 1991. On December 28, 1990,[1] the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based upon an unfair labor practice charge filed on November 8, alleging violations of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record,[2] upon the briefs that were filed, and upon my observation of the demeanor of the witnesses, I make the following

[1] Unless stated otherwise, all dates occurred in 1990.

FINDINGS OF FACT

I. JURISDICTION

At all times material, Douglas Aircraft Company, a Component of McDonnell Douglas Corporation (Respondent), has been a Maryland corporation engaged in the manufacture of aircraft and related products at various locations in the United States, including at a facility located at 3855 Lakewood Boulevard in Long Beach, California. In the normal course and conduct of those business operations, Respondent annually derives gross revenue in excess of $500,000 and, further, annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside the State of California. Therefore, I conclude that, at all times material, Respondent has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

At all times material, United Automobile, Aerospace and Agricultural Workers of America, UAW, Local Union No. 148 has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

Chronologically, this case picks up where the record left off in the prior proceeding, referred to in footnote 2, supra, that led to my decision, JD(SF)–102–91, in that case. To the extent pertinent here, in that proceeding the General Counsel alleged that on August 25, 1989, Respondent discharged MD-80 program employee Wilbert David Sonnier because of the latter's union and protected concerted activities. In that regard, the General Counsel's principal theory of motivation had been that Respondent harbored animus toward Sonnier because of his opposition to certain employee involvement programs instituted by Respondent.

Sonnier, like Joyce Mills, had been a member of a bargaining unit confined to Respondent's Long Beach facility and represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW ''acting through its Locals No. 73, 148, 1093 and 1482.'' In internal union elections, employees run for office by participating in caucuses, similar to political parties. Whenever an internal union election occurs, each caucus sub-

[2] As described in somewhat greater detail in subsec. III,A, infra, this is the second of two proceedings involving Respondent, the first of which concluded 3 months before the instant case was heard. The General Counsel requested that administrative notice be taken of certain evidence adduced during the earlier proceeding. That request sparked a somewhat limited dispute that, in the final analysis, is of no moment. In light of my decision in the prior case, very little of the evidence from it, save for certain undisputed background facts, has value in assessing the issues presented in this proceeding. Accordingly, there is no need to further pursue discussion of the request for administrative notice of portions of the record in that proceeding.

mits a slate of candidates from which the final lists of candidates are selected. At all times material, the two largest caucuses at the Long Beach facility were PUSH and New Horizons. However, just as in the political arena, over time a number of smaller caucuses have been formed and contest for office whenever internal union elections are scheduled. To oppose Respondent's employee involvement programs, Sonnier formed a caucus, denominated Union Power (UP), and began distributing leaflets on its behalf in January 1989, seeking to garner support of other bargaining unit employees.

One employee whose support UP attracted was MD-11 program electrical installer Mills. She had been employed by Respondent for approximately 23 years by the time of her termination on October 24. Although she had left the bargaining unit from 1987 until April 1989, for approximately 2 years, during which she worked for the United Automobile Workers' Labor Employment Training Center, so far as the record discloses, Respondent voiced no objection to allowing Mills to resume employment in the bargaining unit in April 1989. This, despite that fact that she had been the employees' bargaining committee chairperson in 1987 and a member of the bargaining committee from 1981 until 1987, as well as having served as steward and alternative steward during her employment with Respondent.

After joining the UP-caucus, Mills distributed its leaflets on several occasions prior to Sonnier's termination. While none of those leaflets had been signed by her, she did sign and distribute a UP-caucus leaflet in late March 1990, 5 months after Sonnier had been discharged. Moreover, until her own termination, she regularly wore a UP-caucus button. She also ran twice for union office as bargaining committeeperson: in November 1989 and during the following May. In addition, as described in greater detail in subsection III,B,1, infra, she participated in the investigation and hearing arising from the unfair labor practice charge filed by Sonnier. The General Counsel alleges that these activities by Mills led Respondent to issue disciplinary layoffs to her on May 22 and July 31, to conduct pretermination advisory board proceedings regarding her on August 9 and September 14, and to terminate her on October 24. Respondent agrees that these disciplinary measures had been instituted on those dates. However, it denies that any one of them had been motivated by any activity protected by the Act in which Mills engaged.

As discussed more fully post, I conclude that while a preponderance of the evidence does not support the allegations that Respondent's discipline of Mills had been motivated by any union activity, particularly her activity in connection with UP-caucus, a preponderance of the credible evidence does warrant the conclusion that she had been subjected to discipline and termination as a result of her participation in the unfair labor practice proceeding against Respondent initiated by Sonnier. In this connection, it is worth pointing out that when she appeared as a witness in that earlier proceeding, Mills did not appear to testify credibly in certain respects and I did not credit some of her testimony. However, when she testified over 5 months later in this proceeding, she exhibited a more candid demeanor and, for the most part, I credit the testimony that she provided during the hearing in the instant case.

By contrast, while Respondent's MD-80 program officials provided complete and credible testimony regarding their conduct and motivation for events connected to Sonnier's termination, the most separately contingent of MD-11 officials in this proceeding appeared to be testifying in a less than frank and candid manner about their conduct and motivation for having disciplined and discharged Mills. As discussed in succeeding subsections, their testimony was sometimes incomplete, unsupported, internally contradictory, and inconsistent with each others' accounts, as well as with objective considerations. As a result, I do not credit Respondent's explanation of the asserted motivation for disciplining and terminating Mills.

B. *The Protected Activity of Mills*

As described in the preceding subsection, Mills had joined the UP-caucus and, further, had made her support for it known by such conduct as distributing its leaflets, signing one such leaflet that was distributed in March, wearing a UP-caucus button, and running for office on the UP-caucus slate in November 1989 and, again, 6 months later. But these activities were hardly as significant as the General Counsel seeks to portray them. Mills was but one of seven employees who ran for bargaining committee person on UP's slate in May 1990. Moreover, there were a total of 46 employees running on UP's slate of candidates for the various offices in that election. Accordingly, neither in that respect, nor in any other regard, did Mills' support of, and activities on behalf of UP-caucus so distinguish her from the other over 250 employees who had supported that caucus, and its opposition to Respondent's employee involvement programs, that it could be concluded that she would become a natural target for retaliation because of those particular activities.

Furthermore, as discussed in subsection III,B,2, of my decision in the prior case, the UP-caucus never was a serious challenger to PUSH and New Horizons caucuses. That is, its less than 300 direct and associate members never constituted even a significant percentage of the 19,000 to 20,000 bargaining unit members at Respondent's Long Beach facility where approximately 45,000 employees worked. Its existence was not unique. Small caucuses had regularly been formed, and later disintegrated, as groups of employees attempted to challenge the candidates of the two largest caucuses for union offices, as well as policies of Respondent which those two large caucuses did not oppose. Yet, those smaller caucuses were never successful. In fact, Mills was not a successful candidate in either the November 1989 election nor in the one conducted the succeeding May. Consequently, nothing in the circumstances of UP's existence suggests inferentially that Respondent would have been naturally hostile to its proponents and their position on employee involvement. And, as I concluded as a result of the evidence presented in the earlier case, there is no credible direct evidence that Respondent's officials had actually become upset by UP's positions, nor by the particular employees advancing them. No evidence in this case warrants a contrary conclusion. To the contrary, it serves only to reinforce my earlier conclusions that Respondent harbored no animus toward UP-caucus supporters and, further, was not motivated in its personnel actions by any conduct on behalf of that caucus.

More generally, there is no evidence that Respondent took action against Mills—or against Sonnier, for that matter—because of any other union activities. As described in subsection III,A, supra, Mills had been very active on behalf of

the employees' bargaining representative during, at least, the 1980s. Yet, there is no evidence that, in the course of her activities while occupying various union offices, she had ever done anything that would have naturally led Respondent to harbor animus toward her. Indeed, except for her participation in UP-caucus, there is no evidence that she ever engaged in any union activity affecting Respondent since her return to its employment in April 1989. Accordingly, there is no evidence that would supply a causal connection between union activity by Mills and her discipline and termination in 1990.

A contrary conclusion, however, is warranted concerning Mills' participation in the Board's investigation and hearing arising from Sonnier's charge against Respondent. Although there is no direct evidence that Respondent harbored animus toward Mills because of those activities, ''Even without direct evidence, the Board may infer animus from all the circumstances.'' (Citations omitted.) Electronic *Data Systems Corp*., 305 NLRB 219 (1991). See also *Fluor Daniel, Inc*., 304 NLRB 970 (1991). In this case, Sonnier had filed his charge against Respondent on January 3. Mills gave two affidavits in connection with that charge: one on January 11 and the second on May 23, although the latter was originally scheduled for the preceding week. She testified that before the second affidavit was scheduled, at least, she had discussed the fact that she had given an affidavit or would be doing so ''with various people,'' including Mike Jewell, who, at that time, had formerly been her supervisor, but no longer was supervising her. Then on May 15 the amended consolidated complaint issued and it alleged, inter alia, that Respondent had unlawfully discharged Sonnier. One week later Mills received a disciplinary layoff for having left early for lunch on May 19. The hearing in the Sonnier proceeding was scheduled to commence, and did so, on October 25. On the preceding day, Mills was terminated. In the interval, between her first disciplinary layoff on May 22 and her termination 5 months later, Mills was given a partial day's decision-making leave and was subjected to two pretermination advisory board proceedings.

That coincidence in timing between these two sequences of events—the series of disciplinary actions against Mills and the progress through investigation and toward hearing on Sonnier's charge—cannot be simply ignored. ''Timing alone may suggest anti-union animus as a motivating factor in an employer's action.'' (Citations omitted.) *NLRB v. Rain-Ware, Inc*., 732 F.2d 1349, 1354 (7th Cir. 1984). Indeed, of itself, that convergence of the two sequences of events tends to show that there ''was really no coincidence at all, but rather [the discipline had been] part of a deliberate effort by the management to scotch [Mills' willingness to engage in actions to support the charge] before [her actions] progressed too far . . . .'' *NLRB v. Jamestown Sterling Corp*., 211 F.2d 725, 726 (2d Cir. 1954). Then, when it became clear that Mills did not intend to cease her activities in connection with the processing of that charge through hearing, she was terminated on the day before it was scheduled to open.

In the latter respect, most of Respondent's witnesses denied any knowledge of Sonnier, of the hearing arising from investigation of his charge and of Mills' participation in that process. However, three events tend to undermine the veracity of those denials and, affirmatively, tend to support the General Counsel's argument that causation existed between Mills' participation in the investigation and hearing, on the one hand, and Respondent's discipline of her, on the other. First, aside from the above-described conversation in which Mills informed Jewell that she would be giving an affidavit, it is uncontroverted that Jewell regularly asked Mills about the status of Sonnier's case: ''about when his case was coming up or what was going to happen to him . . . was he ever going to come back, and things like that.'' So far as the evidence discloses, no other employee was asked about Sonnier following his termination. Accordingly, Mills was the only employee who was linked with Sonnier's effort to recover his job, through Board processes, in the mind of Mills' former supervisor.

Second, Mills testified that, on October 17 or 18, she had informed her then-group leader, Paul Caulley, that she would be absent from work during the following week, because she had been notified that a subpoena had been mailed by the Labor Board to secure her attendance as a witness in the case involving Sonnier. According to Mills, she explained to Caulley that she did not actually then have the subpoena, because it was at the post office, which was always closed by the time she got off work, but that she would get a subpoena from the Labor Board at the hearing and, then, give it to him to verify her stated excuse for being absent.

Caulley agreed that Mills had given him notice ''that she was going to be off due to a court case.'' But he denied knowing who was involved in that case and denied having known the details concerning it. Yet, as discussed in subsection III,C, infra, Caulley was not a credible witness. Furthermore, he conceded that he did not ''remember any particulars'' of what Mills had said to him when she had given him that notice. As a result, it is undenied that she did inform Caulley that she had been subpoenaed by the Labor Board and, given Caulley's assertedly vague recollection, that Mills did tell him that Sonnier's termination would be the subject of that hearing.

Third, and most importantly, Caulley never testified that he had kept to himself the information that Mills imparted to him about being subpoenaed for Sonnier's Board hearing. Within a week of that disclosure, Mills was terminated on the day before that hearing opened. In connection with that termination, Respondent collected statements from several of its officials concerning Mills' asserted misconduct. One of those officials was Department 541 Section Manager Jeffrey Lee Duvardo, an official who, so far as the record discloses, had never supervised Mills. He testified that the statement had been prepared on October 24, the date on which Mills had been terminated, at the request of then-Human Resources Administrator Stephen Spencer. In the course of describing the circumstances that led him to prepare that statement, Duvardo conceded that he had heard Sonnier's name mentioned during conversations with human resources personnel. More significantly, he expressly admitted that one such conversation about Sonnier had occurred ''around the first time I wrote this—this statement''—in other words, on October 24 when Mills was terminated.

Spencer did not dispute Duvardo's account. Nor did he, or any other official of Respondent, explain why, if Sonnier's hearing had not been involved in the decision to terminate Mills, Sonnier would have been discussed in connection with securing a statement to support the supposedly unrelated subject of firing Mills. Absent such an explanation, it is a fair

inference that Respondent's officials had viewed the two subjects as interrelated and, further, that the one had influenced the other.

Aside from the foregoing, certain objective indicia of unlawful motivation are disclosed by the circumstances of the individual disciplinary measures, as described in greater detail in succeeding subsections. For example, in addition to timing, there were instances when other employees engaged in the same conduct for which Mills was disciplined and, ultimately, terminated. But those other employees were not disciplined, nor was their conduct even investigated. Moreover, in some instances, no effort was made to verify explanations by Mills that could have shown that she did not engage in the particular misconduct of which she was accused. On several occasions, actions and motives were attributed to officials who never were called to supply firsthand accounts of those purported actions and motives. However, at no point did Respondent represent that any one of those officials was unavailable to it as witnesses. Inasmuch as an ''employer alone is responsible for its conduct and it alone bears the burden of explaining the motivation for its actions,'' *Inland Steel Co*., 257 NLRB 65 (1981), its failure to call those officials to provide firsthand accounts of their purported actions and motives ''permits an adverse inference as to its motivation.'' (Citations omitted.) *American Petrofina Co. of Texas*, 247 NLRB 182, 192 (1980).

In the final analysis, to accept the description of Respondent's officials is to accept the somewhat inherently improbable scenario that a long-term employee—one employed over the course of almost a quarter century—suddenly and inexplicably engaged in a feeding frenzy of rules' violations. Unlike the headstrong Sonnier, who appeared fully capable of doing whatever he felt proper regardless of rules and regulations, Mills appeared to be a prudent individual who would not likely jeopardize her job by doing something that might lead to discipline or discharge.

Of course, I dismissed the allegations of unlawful motivation in the decision arising from the earlier charge. But, as pointed out in subsection III,A, supra, the officials involved in this case were almost totally separate from the ones involved there. Further, the fact that one employee had not been unlawfully treated does not dictate an identical result in evaluating motivation in subsequent treatment of employees. For, as Justice Powell pointed out when speaking for the majority in a case involving discrimination, albeit of the racial type, a single act of discrimination ''would not necessarily be immunized by the absence of such discrimination in the making of other comparable decisions.'' (Citation omitted.) *Village of Arlington Heights v. Metropolitan Housing Development*, 429 U.S. 252, 266 fn. 14 (1977).

In the final analysis, the motivation shown here differs from that alleged in the earlier case. Although Respondent's defenses in that earlier case were formidable, and I found them to be credible, Respondent could not have foreseen in mid-1990 that it would ultimately prevail in that case. Furthermore, there is no evidence that the MD-11 program officials possessed knowledge of the strength of Respondent's case against Sonnier. As a result, they could have acted in the belief that they were fortifying Respondent's position without realizing that fortification was unnecessary. Moreover, to violate Section 8(a)(4) of the Act, an employer's officials need not have been concerned with the effects of an employee's testimony on the outcome of a particular pending case in which that employee may be testifying. Rather, they need only have been concerned about employee-willingness to participate in investigation and prosecution of any charges, including future ones, against their employer. Consequently, the anticipated strength of Respondent's position in the earlier case does not detract from the General Counsel's prima facie showing in this one that the ongoing discipline and ultimate termination of Mills had been motivated by an effort to deter Mills from, and to retaliate against her for, participating in the processing of a charge against Respondent and, further, that those personnel actions had a natural tendency to deter other employees from engaging in like conduct protected under Section 8(a)(4) of the Act.

C. *The Discipline Imposed on Mills*

A prima facie case can be rebutted by a showing of legitimate considerations that actually motivated a respondent's personnel actions. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). However, a respondent does not satisfy its burden of going forward simply by showing that misconduct did in fact, occur. For, ''mere existence of valid grounds for a discharge is no defense to a charge that the discharge was unlawful, unless the discharge was predicated solely on those grounds . . . .'' *NLRB v. Symons Mfg. Co*., 328 F.2d 835, 837 (7th Cir. 1964). Accord: *Singer Co. v. NLRB*, 429 F.2d 172, 179 (8th Cir. 1980). This is so because in the area of discrimination allegations, ''the pivotal factor is motive,'' (citation omitted), *NLRB v. Lipman Bros*., 355 F.2d 15, 20 (1st Cir. 1966), and the ultimate ''determination which the Board must make is one of fact—what was the actual motive of the discharge?'' *Santa Fe Drilling Co. v. NLRB*, 416 F.2d 725, 729 (9th Cir. 1969). As a result, where a respondent advances reasons for personnel actions that are false ones, it fails to supply credible evidence of actual motivation and, hence, fails to satisfy its burden of going forward with evidence to rebut the General Counsel's prima facie case. See, e.g., *Springfield Manor*, 295 NLRB 17 fn. 2 (1989). For the reasons discussed in succeeding subsections, that is what has occurred here: Respondent's evidence was not credible and, accordingly, it has failed to rebut the General Counsel's prima facie case.

1. The disciplinary layoff of May 22

At 11 a.m. on Saturday, May 19, then-Department 500 Group Leader William Hayden was waiting at gate 813 for his wife to pick him up so that they could go on a few days' vacation. As he waited, he observed several department 500 employees approach the gate with the apparent intent of leaving early for lunch, not scheduled to commence until 11:30 a.m. Hayden confronted one or two of the employees whom he knew and, from the guard shack at the gate, called back to his department to report what he was observing. Then his wife arrived and he left with her.

On Tuesday, May 22, Hayden returned to work. He reported to then-Human Resources Administrators Spencer and Carol Young what he had seen at gate 813 on the preceding Saturday. Later that day, each employee identified by Hayden was called to an individual meeting with his/her group

leader, a union steward, and Spencer or Young. Hayden also appeared at each meeting to describe, in the employee's presence, having seen that employee leaving early for lunch on Saturday. Each employee was given a 1- or 2-day disciplinary layoff.

Mills was one of the employees given a 1-day disciplinary layoff for having left at 11 a.m. on May 19. During her May 22 meeting with management and when she testified, Mills denied that she had done so and asserted that she had been working with another employee, Marina Rodriguez, prior to lunch that day. Conversely, Hayden testified that Mills had been one of the employees whom he had observed leaving through gate 813 around 11 a.m. on May 19. Further, Spencer testified that Group Leader Justin Domingo, Mills' immediate supervisor that day, had reported that he had been unable to locate her when he had looked for her before lunch that day. Yet, these accounts were not as convincing as Respondent seeks to portray. Furthermore, analysis of the evidence discloses a number of deficiencies in those facially reasonable accounts.

Although Rodriguez never appeared as a witness in this proceeding, Spencer conceded that, in making the determination to discipline Mills, Respondent had never bothered to verify Mills' explanation that she had been working with Rodriguez prior to lunch on May 19. Instead, he testified that, ''Based on the information I received from Mr. Hayden and the information I received from Mr. Domingo, I didn't feel that there was any reason to speak with Marina Rodriguez.'' However, Hayden's account of having assertedly seen Mills exist through gate 813 was not conclusive as to Mills' whereabouts during the period before lunch on May 19. For, he conceded that Mills ''could have gone back through Gate 35 or 36 and just got [sic] right back in, said she went out to her car for something, gone to get a tool.'' As a result, even had Mills actually gone through the gate at around 11 a.m. on May 19, according to Hayden, ''she could have returned through another gate, been in her work area. We have probably eight gates at [Respondent]. She could have re-entered.''

In fact, it had been that very possibility, admitted Hayden, that had led him to call from the guard shack so that group leaders could ''verify and get absolute proof that these employees were not where they said they were going to be, and have a double-check.'' In this respect, Hayden testified specifically that Domingo had been one of the group leaders to whom he had spoken on May 19. However, his testimony in that regard was not always consistent. During direct examination, Hayden testified that, during his call from the guard shack on May 19, Domingo had ''said he—he was going out, taking a look'' for Mills and, further, that after having done so, Domingo had ''said he could not locate her.'' But, during cross-examination, Hayden contradicted his own earlier testimony that Domingo had said on May 19 that he ''could not locate'' Mills. For, at that later stage, Hayden testified that, after he had reported having seen Mills leaving, Domingo ''went and looked, and I never followed up at that time that day to see if he found her or didn't find her, 'cause I went on vacation.''' In light of this internal contradiction, Hayden's hearsay account on direct examination, concerning the result of Domingo's asserted search for Mills, is not a reliable basis for contradicting Mills' testimony that she had been in her work area with Rodriguez until the scheduled lunchbreak on May 19.

Of course, as set forth above, Spencer testified that he also had spoken with Domingo before Mills had actually been disciplined. According to Spencer, Domingo had reported that he had searched Mills' work area before lunch ''and could not find Mills then.'' Furthermore, Spencer claimed that while, on May 22, he had recommended that Mills be disciplined, ''It was really up to Justin what action we took,'' because it is departmental management, not human resources personnel, who actually make decisions to impose or not impose discipline. As a result of Spencer's testimony, not only was Domingo the only official of Respondent who possessed firsthand knowledge as to whether Mills had or had not been in her work area prior to lunch on May 19, but, he had been the official who had made the decision to impose discipline on Mills on May 22. And, as the official who purportedly made that disciplinary decision, Domingo's ''motivation was critical on the question of Respondent's reason for'' it. *American Petrofina Co. of Texas*, supra, 247 NLRB at 192.

Yet, despite Hayden's express assertion that, ''We can get her supervisor, Justin Domingo, to verify that he couldn't find her in her work area for two hours,'' Respondent never called Domingo as a witness. It did not represent that he was not available. Nor did it explain that there was some other reason for failing to call him to provide firsthand evidence of his asserted search for Mills before lunch on May 19 and, more importantly, to explain the reason for his asserted decision to discipline her three days later. As a result, Respondent's ''failure to call him permits an adverse inference as to [Mills' purported absence from her work area on May 19 and] as to its motivation.'' (Citations omitted.) Id.

Indeed, Respondent's failure to call Domingo as a witness was crucial in another respect in connection with the May 22 discipline of Mills. According to Spencer, under Respondent's corrective guidelines, corrective action coaching ''would normally be the first stage before we entered formal discipline—would be a informal counseling session.'' Of course, Mills' May 22 disciplinary layoff was formal discipline. Had she actually left early for lunch on May 19, the logical question arises as to why she had not simply been informally counseled about it. Spencer attempted to supply an answer by testifying that Domingo had previously reported that Mills had been informally counseled by him for being away from her work area for four hours without permission.

To support Spencer's testimony, Respondent introduced a document reciting a description of that counseling and, in addition, Mills' 1990 attendance card on which that asserted corrective action was recorded. Interestingly, the descriptive document lists three participants in the counseling: Domingo, Fred Myers, and Dan Webb. Not only was Domingo not called by Respondent as a witness, but neither was Myers or Webb, although there was no representation that they were unavailable to Respondent. Of course, their unexplained nonappearance would not preclude consideration as substantive evidence of the information on those records under Fed.R.Evid. § 803(6): as records regularly maintained in the course of a regularly conducted business activity. Yet, by its terms, that evidentiary rule is not applicable where ''the source of information or the method or circumstances of preparation indicate lack of trustworthiness.''

Mills flatly denied having ever seen the descriptive document, reciting the circumstances of the asserted counseling. She further denied that such a counseling session had ever occurred. Moreover, the two records are not consistent. According to the attendance card Mills was counseled for violations of ''RULE 43/42 & F.P.I. 37.'' But the descriptive document recites that she was counseled about violating ''company rules #37, #34 and #51.'' This discrepancy was not explained.

The attendance form lists April 30 as the date of the counseling, while the descriptive document is dated ''May 01, 1990.'' In attempting to clarify that particular discrepancy, Spencer only created a greater one. For, with respect to the descriptive document, he testified, ''Well, it's dated May lst, but [Domingo] informed me that the counseling session took place on April 30th.'' However, that is not what was reported in the ''DISCUSSION'' portion of the descriptive document, which described the incident that assertedly led to the purported discipline and that assertedly was prepared by Domingo: ''On May 01, 1990 at approximately eleven o'clock a.m. we conduct[ed] a[n] activity audit of the Aft cabin installation team.'' Consequently, contrary to Spencer's testimony, Domingo could not have reported counseling about that incident as having taken place on April 30, because the audit that purportedly led to counseling did not occur until the following day.

Spencer denied that he ever had spoken to Jewell about Mills giving an affidavit in connection with Sonnier's charge against Respondent. However, Spencer did not generally appear to be testifying candidly and that impression is supported by the illustrations in this and succeeding subsections of objective infirmities in his accounts and of their inconsistencies with other evidence. Moreover, as discussed in subsection III,B, supra, it had been Spencer who Duvardo admitted had referred explicitly to Sonnier in the course of securing Duvardo's statement to support termination of Mills.

Given the circumstances under which Mills was suddenly disciplined on May 22, especially the failure to investigate her defense and to produce firsthand evidence of her purported infraction, as well as of the asserted earlier counseling to which she denies that she had been subjected, I do not credit Respondent's defense. Rather, given the proximity of her disclosure to Jewell, as well as of issuance of the amended consolidated complaint against Respondent, to issuance of the disciplinary layoff to Mills, a preponderance of the evidence supports the allegation that the MD-11 officials simply took advantage of Hayden's sighting of early departing employees and added Mills to the list, as a latent warning to her of their power to retaliate against her should she persist in participating in an unfair labor practice proceeding against Respondent. In this respect, the unsupported record of an earlier purported counseling was no more than a vehicle for justifying a disciplinary layoff on May 22, as well as a means for attempting to minimize the adverse inference that might be drawn against Respondent because of the layoff's close proximity to her disclosure to Jewell and to issuance of the amended consolidated complaint.

2. The July 31 decision-making leave

In contrast to the preceding subsection, there is no essential dispute regarding the sequence of events underlying this allegation. On July 31 Mills was working on a plane located in building 84 under the immediate supervision of Group Leader Caulley, whose own immediate supervisor was Business Unit Manager Anthony R. Cerda. During the morning Mills left building 84 and went to the east ramp to confer with Steward Pete Tuiososopo. While the east ramp was not a part of Mills' work area that day, Respondent does not contend that she violated its rules by having gone there to speak with a steward.

After speaking with Tuiososopo, Mills returned to building 84 in the company of another employee, K-2-J Structural Mechanic Linda Carter. However, before they reached that building, Mills noticed one of her daughters standing outside of the perimeter fence. While Carter stood waiting, Mills walked over to the fence and spoke with, and obtained some money from, her daughter through the fence for no more than 4 minutes. Then, she and Carter resumed walking toward building 84, with Carter walking 2 or 3 feet ahead of Mills.

Department 500 Manager Carl Stone happened to be standing at the entrance through which Carter and Mills would be passing. He said nothing to Carter, but as Mills was walking by he said hello and asked how she was doing, after which he inquired what she had been ''doing out there'' at the fence and, when Mills replied ''getting money from my daughter,'' inquired if Mills had a job assignment. Mills responded that she did have one. Their exchange concluded with Stone saying, ''you know, you should be on it,'' and with Mills replying, ''I'm on my way.'' So brief was this exchange that neither Carter nor Mills stopped walking as it was occurring and, following its occurrence, both continued walking into building 84.

Carter heard no more about the events of July 30. However, on the following day Mills was summoned to a meeting in human resources with Spencer, Cerda, Caulley, and stewards Jormat and Tuiososopo. Nothing was said during that meeting about her July 30 conversation with Tuiososopo on the east ramp. Instead, she was accused of violating Respondent's rules by having been out of her work area during the few minutes that she had been at the fence. Mills admitted that she had been there and, further, acknowledged that she had been out of her work area while there. The meeting concluded with Mills being shown a memorandum pertaining to the May 22 disciplinary layoff, being told that she would need to obtain an employee activity pass[3] whenever she left her work area, and being placed on a decision-making layoff for the rest of that day. Under that form of disciplinary measure, the employee is paid to take the rest of the day off to think about whether to comply with Respondent's rules or, alternatively, to cease working for it.

Mills testified that, given her years of employment with Respondent, there had been no decision for her to make: she wanted to continue working there. Accordingly, when she returned to work on August 1, during a meeting with the same

[3] Union and employee activity passes are described in some detail in subsec. III,A, of my decision issued as a result of the earlier hearing. Essentially, they are documents on which a supervisor records the time whenever an employee leaves his/her work area and on which the supervisor of the area to which that employee goes records the time of arrival there, with both supervisors signing the pass by the time that each one records. Then the process is reversed whenever the employee leaves the visited area and returns to his/her work area.

union and management officials as on July 31, she agreed to sign a memorandum which was presented for her signature. It recites that Mills had been ''out of [her] department without authorization in violation of Rule 37'' and that, ''Because of the Disciplinary Lay Off you received 22 May 1990 this rule violation could be grounds for discharge.'' The memorandum continues with the warning ''that the next time you are out of your work area for more that [sic] 15 minutes without permission, or leave the plant without permission, you will be subject to more severe discipline, up to and including discharge.''

It is not disputed that the area adjoining the perimeter fence is not a work area. Nor is it controverted that Mills had been in that area on July 30 and that Stone had seen her there. However, any support that Respondent's defense derives from those conceded facts is dissipated by analysis of the evidence pertaining to other aspects of the decision-making leave that was imposed on Mills. One of the more prominent ones is a comparison of the terms of the discipline with the underlying offense upon which it was purportedly based. As quoted above, the disciplinary memorandum specifies that Mills would be subject to further discipline whenever ''out of [her] work area for more that [sic] 15 minutes . . . .'' Yet, it is uncontroverted that Mills had been at the fence for no more than 4 minutes on July 30. In short, she would not have been subject to discipline for being at the fence if, at that time, she had been subject to the memorandum's restriction. Accordingly, Respondent imposed, as discipline, a more generous time standard than it allowed for Mills' supposed offense that led to that discipline. At no point did Respondent explain this discrepancy.

It also is difficult to escape noticing that Mills was disciplined for what is really a rather trivial offense. Of course, ''Board law does not permit the trier of fact to substitute his own subjective impression of what he would have done were he in Respondent's position.'' (Citation omitted.) *Super Tire Stores*, 236 NLRB 877 fn. 1 (1978). Nevertheless, the July 31 memorandum characterizes Mills as ''a very valuable employee'' and where an ''employee is a good worker and [the] breach of the work rules is trivial,'' the quantum of discipline may be explained by an ''invidious motivation.'' *Neptune Water Meter Co. v. NLRB*, 551 F.2d 568, 570 (4th Cir. 1967). Here, Mills was disciplined for a purported failure to work during a period of time that did not exceed the standard imposed by the discipline. Further, no discipline was imposed upon Carter, who had been with Mills during the period of Stone's observation and, consequently, had not been working for a period of time identical to that during which Mills had not worked.

True, unlike Mills, Carter had not actually gone to the fence, itself, on July 30. But she had stood nearby and, while so doing, had not been performing any work. Respondent did not contend that there was a disciplinary distinction between being near the fence, as opposed to be at the fence. To the contrary, Cerda conceded that if Carter had not possessed a pass that day, she ''[m]ost definitely'' should have been disciplined, as had Mills. Yet, she was not.

Cerda was Respondent's primary witness who attempted to explain why Mills, but not Carter, had been disciplined on July 31. However, his explanation was unconvincing and, further, absolutely at odds with other evidence presented by Respondent. For example, at one point he asserted that he ''had no reason to'' find out the name of the employee who had been with Mills on July 30. But he contradicted that assertion at another point, by testifying that, when reporting his observation of Mills at the fence, Stone had mentioned ''[t]here was another lady with Joyce'' and, most importantly, that he had been told by Stone to find out the identity of that other employee. Given that Stone was, as Cerda put it, ''my supervisor,'' it seems that, contrary to his earlier assertion, Cerda would have had every ''reason to'' ascertain Carter's identity—at least, were the incident truly as significant as Respondent now seeks to portray it.

In fact, despite his, at one point, supposed lack of a reason to find out Carter's identity, Cerda claimed that he thought that Caulley had inquired and had learned the identity of Carter. However, in the course of describing the events of July 30 and August 1, Caulley made no mention whatsoever of having investigated, or even discussed with Cerda, the subject of the employee who had been with Mills on July 30. In short, Caulley did not corroborate Cerda's account of an asserted inquiry and determination of Carter's identity. And, in the end, Cerda was left lamely testifying that the employee with Mills ''*may* have had a pass to be out her work area'' (emphasis added), and that making an inquiry concerning whether she had one would be tantamount to ''assuming that the other employee did not have a pass''—an assumption in which Cerda appeared unwilling to indulge with respect to an employee other than Mills.

Cerda's attribution to Caulley of an investigation of Carter's identity was not the only portion of his testimony that was not corroborated by Caulley. For Cerda claimed that, after having received Stone's report, he had ''contacted Paul Caulley and asked him to contact Joyce and find out what was going on.'' According to Cerda, Caulley ''returned and informed me that Joyce had been out at the fence giving some money, I think it was, to a relative.'' But, Caulley did not corroborate that testimony: gave no testimony about such a request by Cerda, nor about a report back to Cerda concerning statements by Mills. Indeed, Mills denied having spoken with Caulley about the incident at the fence prior to the July 31 meeting. And Caulley did not dispute her denial.

According to Spencer, Steward Jormat also had reported having seen Mills at the fence at the same time as Stone had done so. Of course, it is not disputed that Mills had been there and that Stone had seen her. But the significant point about this purported second sighting is that Jormat was never called as a witness to confirm having made it, nor to having reported it to Respondent's officials. Indeed, as with Domingo, Stone was never called to testify about his own observation of Mills nor, more importantly, concerning the statements attributed to him by Respondent's other officials, especially Cerda. Respondent did not represent that either Jormat or Stone was unavailable as a corroborating witness. Moreover, its failure to call Stone leaves undisputed the testimony that, during a conversation with Mills on July 31, a seemingly surprised Stone told Mills that ''he didn't know anything about any discipline'' concerning the fence incident.

It is noteworthy that, as in all instances of discipline of Mills between May 22 and October 24, Spencer—the human resources official who had brought up Sonnier's name in the course of collecting evidence to support the discharge of Mills—had been a central figure in the determination to discipline Mills on July 31. By that date, the hearing on the

complaint arising from Sonnier's charge was less than 3 months away. There is no evidence that Mills had given Respondent any indication that she was less favorably disposed toward continuing to participate in the processing of that case than she had been in the spring, when she had disclosed that she would be giving an affidavit. As described in succeeding subsections, subsequent events reinforce the conclusion that the decision-making leave of July 31 was, in effect, a second salvo in what would become an accelerating campaign to impress upon Mills the possible consequences of continuing to participate in the proceeding against Respondent and, further, of the ultimate consequence—discharge—that could result if she persisted in continuing on that course.

3. The August 9 pretermination advisory board proceeding

In fact, within 10 days of the decision-making leave Mills found herself again confronting discipline, this time for having been in a restroom. On August 3, Mills entered a restroom that was not in her immediate work area, but that was located in building 84. Other women were already in there and at least one other woman—Electrical Installer Tammy Syphax—entered after Mills. Also entering after Mills was Group Leader Laurie Welch, who went into a stall and, then, left the restroom. However, Welch returned in the company of Group Leader Rosemarie Bracho. The two group leaders inquired if the employees had work to perform and some of the employees, including Syphax, promptly left. But, Electrical Inspector Jacqueline Smith remained, replying that she was an inspector and had no calls on board. Like Smith, Mills remained, saying that she was ''waiting on power on.''[4] It is undisputed that Welch responded merely, ''Okay. I just wanted you ladies to know this is no place to be in the restroom.''

The foregoing account of this incident is based upon the testimony of Mills and Syphax. Statements from Welch and Bracho, collected by Spencer, were offered by Respondent with the specific understanding that they would not be received for the truth of their accounts. But, neither Welch nor Bracho was called as a witness, although there was no representation that either one was not available for that purpose. Nor were they the only officials not called to provide firsthand accounts of the events purportedly leading to yet another meeting with Mills in human resources.

Spencer testified that on August 3 he had received a call from Welch, reporting that ''several women [were] apparently loafing in the restroom,'' and that he had ''advised her to find another female group leader and confront the women.'' Later, testified Spencer, he had received a call from Department 500 Business Unit Manager Carl McDowell who assertedly reported ''that one of the people was Joyce Mills and that she had had a confrontation with Laurie Welch, and I told him to have Laurie Welch and the other female group leader write statements if they hadn't already . . . .'' Because Cerda, as well as Caulley, had been absent from work on August 3, McDowell had been filling in for Cerda that day. However, Respondent never called McDowell to corroborate Spencer's account of that asserted telephone report, nor, for that matter, to testify that Welch, in fact, had made such a report to him (McDowell) about the restroom encounter. Again, there was no representation that McDowell was unavailable to testify.

Furthermore, the person filling in for Caulley, as acting group leader, at that time had been then-Senior Manufacturing Coordinator Edward Jennings. Spencer testified that Jennings had been asked to which plane Mills had been assigned to work on August 3. Yet, while Respondent did call Jennings as a witness, at no point did he confirm that he had been consulted about Mills' work station that day, nor about whether she had failed to perform her assigned work there on August 3.

Ordinarily, but not always, whenever Respondent contemplates terminating an employee, it convenes a pretermination advisory board (PTAB). Human Resources Employee Business Unit Manager Peggy Nixon testified that the PTAB's purpose ''is to bring management, the employee, the union and human resources all together in one room, review all the facts and make sure all the bases are covered . . . and to review it with all four areas and to make sure they all talk about it prior to termination.'' Although the PTAB procedure is briefly described on page 28, in subsection III,B,3, of my decision in the earlier case, that description pertained to PTAB procedure as implemented by MD-80 program officials. It is not necessarily wholly applicable here, where MD-11 program officials were involved, since implementation of the PTAB's seemingly uniform procedures varies between officials of Respondent's programs.

Whenever Respondent's officials determine that discipline may be warranted, a union steward and a human resources administrator conduct a joint investigation. After collecting written statements,[5] and whatever other documents they feel are pertinent, the two officials prepare a joint statement of facts. It contains no disciplinary recommendation. Rather, it recites only the pertinent information from the statements and other documents. Along with those statements and other documents, the joint statement is presented to a three-member PTAB panel: the employee's business unit manager, a human resources administrator from the same program, and the bargaining committee person from that program. By that stage, Respondent has made a preliminary determination that termination is warranted. But that determination is not irrevocable. While the PTAB is not an evidence-gathering proceeding, the bargaining committeeperson and the employee can present agruments, based upon the already collected evidence. Once that has been completed, the business unit manager and human resources administrator confer privately, deciding whether or not termination is warranted.

With respect to events arising from the August 3 restroom incident, a joint investigation was conducted by Steward

[4] It turns out that this was a misuse of a technical term. In essence, ''power on'' pertains to a particular stage of constructing an airplane, whereas Mills meant that she was being obstructed, by a structural mechanic's performance of his job, from hooking up to the power source for her particular job. The misuse of the term is not significant, since Respondent's officials admitted that her actual meaning had been clarified during the subsequent investigation of the incident.

[5] The fact that a joint investigation is conducted does not mean that the steward and administrator are together whenever a statement is secured from a particular employee or official. It means that the two of them sift through statements that one or both collect and then, as described in the text, prepare a written review of the pertinent information from those statements and other documents.

Jormat and Administrator Spencer. A PTAB then was conducted on August 9. Business Unit Manager Cerda and MD-11 program, Human Resources Group Leader David L. Young served as Respondent's two official on that PTAB panel, along with Bargaining Committeeperson Roy Kennedy. Mills was shown the joint statement and underlying documents. She explained that the restroom was proximate to her locker[6] and that it had been a cleaner one than the ladies' restroom in her work area. In the end, it was determined that termination was not warranted.

Young denied adamantly that the PTAB determination had been based upon a conclusion that Mills had not committed any offense: ''The PTAB only states whether or not just cause for discharge exists; it does not state that she was innocent.'' According to Young, ''we remanded it back to management and Steve Spencer and the steward'' for those officials ''to either take no action or take action less than discharge.'' However, Cerda, Mills' business unit manager, did not confirm that he had been told that the matter was being remanded ''to either take no action or take action less than discharge.'' Likewise, Spencer did not corroborate Young's account of a remand presenting those alternatives. To the contrary, Spencer contradicted Young's testimony. For Spencer testified that he had been told by Young that the panel ''didn't feel that there was grounds for any disciplinary action. So none was to be taken.'' In fact, Respondent admits that no disciplinary action whatsoever was taken as a result of the August 3 restroom incident and, contrary to Young's testimony, there is no evidence whatsoever that line supervision and Spencer even considered imposing discipline less severe than termination on Mills.

In addition to the foregoing examples, contradiction and lack of consistency characterize other aspects of Respondent's testimony and other evidence pertaining to the August 9 PTAB. For example, Welch's statement recites that, after the women had been told that the restroom was no place to wait for work, Mills had retorted that employees get ''yelled at for standing around'' whenever ''they are out at the ship,'' after which Mills assertedly questioned why Welch had not asked the female workers about their ''job assignments before when [Welch] was in the restroom.'' Indeed, Welch's statement recounts that Mills had asked that question a second time before Welch and Bracho had left the restroom.

Bracho's statement does refer to ''a discussion'' between Mills and Welch in the restroom on August 3. However, Bracho's statement makes no mention of Mills saying anything about being ''yelled at for standing around'' whenever ''out at the ship.'' Nor does Bracho's statement make mention of Mills having questioned why Welch had not asked the women in the restroom about their job assignments when Welch had previously been in there. Instead, Bracho's statement recites only that when she and Welch had asked the employees to return to work, Mills had responded ''that her boss was not at work today.'' In sum, the comments attributed to Mills in Welch's statement are not corroborated by Bracho's statement. And there is no testimony corresponding to Welch's written account because, of course, neither Welch nor Bracho was called as a witness to supply one.

Another contradiction in Respondent's defense emerges from a comparison of the two group leaders' statements and the joint statement, on the one hand, with Spencer's and Cerda's efforts to explain why a PTAB had been convened in the first place, on the other hand. Spencer claimed that Mills' reply to Welch, as set forth in the latter's statement and as described above, ''to me . . . was an indication that she was hiding in the bathroom'' and, further that ''the proximity of the aircraft that she was assigned to the restroom'' led him to ''determin[e] that she was out of the work area without permission.'' Yet, it is undisputed that the restroom used by Mills had been proximate to her locker and, as described in footnote 6, supra, employees are allowed to go to their lockers in building 84 when working there. Moreover, although Cerda, Respondent's other official on the August 9 PTAB panel, also identified being ''away from her assigned work area'' as a reason for proceeding to PTAB, he did not corroborate Spencer's testimony that concern about Mills ''hiding in the bathroom'' also had motivated doing so. In fact, so far as the record discloses, there was no consideration whatsoever during the PTAB deliberations of whether Mills might have been, in effect, loafing in the restroom on August 3, even though Spencer claimed that Welch had made that specific assertion during her telephone call to him on that date. In sum, Spencer's assertion that such a possibility had influenced convening a PTAB is corroborated neither by Cerda's testimony nor by any other evidence presented by Respondent.

Conversely, the evidence does disclose that there was consideration during the PTAB of the length of time that Mills had been in the restroom on August 3. Both Young and Cerda, Respondent's officials on the panel, agreed that the decision not to terminate Mills had been based upon, as Cerda phrased it, ''the time frame in the restroom.'' Similarly, Young explained, ''The time frames were not clear enough to say that it was a terminable offense . . . .'' As set forth in subsection III,C,2, supra, at the beginning of August Mills had received a memorandum that prohibited her from being ''out of [her] work area for more than 15 minutes without permission . . . .'' In essence, it was inability to show that Mills had been in the restroom for so long a period that led Young and Cerda to conclude that she could not be terminated. Yet, that fact—that there was no evidence showing that Mills had violated the time limitation of the earlier memorandum—had been plainly apparent even before the PTAB panel had even convened on August 9.

The only reference to time in Bracho's statement is that she had been ''approached'' by Welch at approximate 12:20 pm'' on August 3. Somewhat inconsistently, Welch recited in her statement that it had been at 12:20 p.m. when she had entered the restroom for the first time on that date. Welch continued by stating that she and Bracho had returned there ''at approx 12:25 or 12:30,'' thereby, at least, possibly intimating that Mills could have been in the restroom for more than 15 minutes over the course of the two visits there by Welch. But any such intimation was dispelled by the overall results of the investigation that led to the joint statement. In that statement, Spencer and Jormat conclude, with regard to Welch's involvement that day, ''the whole period of elapsed

[6] Respondent did not challenge that explanation. In the course of testifying about Mills' termination, Caulley admitted that, while working in building 84, the department 500 employees had never been told that they needed permission to go to their locker located there. Consequently, although the restroom used by Mills had not been in her work area, it had been in an area into which she was allowed to go.

time was approximately 10 minutes.'' Consequently, there was no basis prior to convening the PTAB for concluding that Mills had exceeded the 15-minute limitation of the memorandum given to her on August 1. Since the PTAB is not an evidence-gathering proceeding, there could be no reasonable expectation that evidence would be disclosed during it that Mills had been in the restroom for a period exceeding the memorandum's limitation. That is, there was no reason for the conclusion that Mills' presence in the restroom on August 3 warranted a preliminary determination that she should be fired, because there was no disclosure during the joint investigation that she had violated the 15-minute restriction of the memorandum given earlier to her.

Nevertheless, Mills was compelled to undergo a PTAB which resulted in the very determination that was obvious before that proceeding was convened. At no point did Spencer, or any other official of Respondent, explain why Mills had been subjected to a proceeding whose result was so obviously predictable.

Finally, and perhaps most prominently, no other employee was compelled to submit to a PTAB, nor even investigated, for having also been in the restroom at the same time as Mills on August 3. Certainly the presence of these other employees was no secret from Respondent's officials, specifically Cerda, Spencer, and Young. Spencer admitted that Welch had reported their presence when she had spoken with him on August 3. Both Welch and Bracho wrote in their statements that Mills had been but one of several women present in the restroom that day. The joint statement also recited as much. Yet, only the presence there of Mills attracted the disciplinary attention of Respondent's officials.

Both Cerda and Spencer attempted to explain that disparity in disciplinary procedure. However, in the end, their explanations did not correspond. Spencer claimed that those other employees' supervisors had not brought their presence to his attention ''as a disciplinary problem'' and, accordingly, ''I didn't know if they were out of their work area.'' Yet, as described above, Spencer testified that in her call of August 3, Welch had reported ''several women apparently loafing in the restroom.'' Surely that report, if made, put Spencer on notice that possible misconduct was being engaged in by more than one employee, though their supervisors may not have been aware of it. And, as described in subsection III,C,1, supra, when employees were seen leaving early for lunch in May, those employees' group leaders were notified so that they could determine if misconduct was occurring. Yet, no such procedure was followed 3 months later with regard to the possible loafing of a group of employees in the restroom.

In contrast to Spencer, Cerda claimed that the identities of the other women had been unknown and, ''if you didn't have the names how could you investigate it[?]'' Not only was that explanation at odds with the one advanced by Spencer, but it was clearly untruthful. In their statements, both Welch and Bracho identified Jacqueline Smith by name. Indeed, Smith submitted a statement during the course of the joint investigation. So, also, did Linda Carter, thereby identifying herself as an employee who had been in the restroom with Mills on August 3. Accordingly, at least two employees other than Mills had been identified before the PTAB as employees who had been in the restroom at the same time as Mills on August 3. Yet, no effort was made to investigate if they had been ''loafing'' in there, as Welch purportedly had reported to Spencer on August 3.

In sum, when they testified, it did not appear that Respondent's witnesses were being candid. A review of their accounts, and a comparison of them with other evidence, confirms that impression, as illustrated by the foregoing examples of the inconsistencies and uncorroborated versions of events of August 3 through 9.

4. The pretermination advisory board proceeding of September 14

In the middle of the following month, Mills was confronted by another PTAB, this time resulting from an incident that occurred on September 7. In midafternoon of that date, Mills left her work area in building 84 and went to the east Ramp to confer about a work-related problem with Inspector Jacqueline Smith. According to Mills, her proposed solution to that problem was similar to one that she had utilized on another aircraft that Smith had inspected and approved on an earlier occasion. Thus, testified Mills, she had gone to the east ramp on September 7 to ascertain if that same solution might pass inspection in this instance, also.[7]

Mills testified that before leaving her work area, she had looked for her group leader, Caulley, and for her team leader, Dee DeLeon, to inform one of them where she was going, but had been unable to locate either one of them. Thus, testified Mills, she had notified Department 500 Manufacturing Coordinator or Quality Specialist Fernando Clarke, who had been her group leader until replaced by Caulley in June or July, that she was going to the east ramp. Mills further testified that she had also asked Clarke to inform DeLeon of that fact. Neither Clarke nor DeLeon was called as a witness, although there was no representation that either of them was not available. However, the result of the joint investigation of this incident corroborated Mills' account of what she had done before having left for the east ramp on September 7.

Significantly, in contrast to the procedure followed in connection with the August 9 PTAB, and with respect to some officials contacted in connection with investigation of the September 7 incident, no statements were collected from Clarke or DeLeon. Respondent did not explain this variance from what seems to have been its standard procedure, at least

[7] I sustained an objection to Caulley testifying about his search of assembly orders that assertedly disclosed that Mills had not worked earlier on the plane that she had identified as being the one on which she had applied the solution that Smith had approved. Caulley admitted that he had not undertaken that search until after September 14 and that by the time that he had done so, the PTAB concerning this incident had been concluded. Accordingly, the asserted disclosure of his search had not influenced the decision made by Respondent's officials as a result of the PTAB. Moreover, regardless of whatever plane Caulley understood that Smith had previously approved after Mills had worked on it, the joint statement prepared for the September 14 PTAB recites that, ''Jackie Smith stated that she had spoken with Mills about the problem Mills was having with her assignment for no more than 10 minutes. She said that it was pertaining to a job Mills had in the cabin of 456 or 457 . . . .'' Consequently, the investigation accepted as fact that Mills had been engaged in a work-related discussion on September 7 and there is no evidence showing that Respondent's officials believed otherwise on September 14, when the PTAB panel addressed and resolved the preliminary determination that Mills should be fired.

for MD-11 program officials, whenever preparing for a PTAB. Nevertheless, the joint statement of facts, prepared for the PTAB concerning this incident, shows that both Clarke and DeLeon had been contacted during the investigation. For the joint statement recites, consistently with Mills' testimony, that ''Clarke stated that Mills asked him where Caulley was shortly after the second break. When he replied that he didn't know she asked him to inform DeLeon that she was going to the east Ramp.'' Moreover, the statement continues by reciting that, ''Dee DeLeon stated that she was informed by Clarke that Mills was going to the Ramp between 2:00 and 3:00.''

Mills testified that, on the east Ramp, she and Smith had sat at a table discussing the problem which had brought Mills to that location. As described in footnote 7, supra, the joint statement recited that Smith had confirmed that she and Mills ''had spoken . . . about the problem Mills was having with her assignment . . . .'' As they sat there, testified Mills, Caulley had walked past, but had not spoken to her. Caulley testified that there is ''an open area between [two trailers] that you can walk through and then right here next to it . . . there's an open area with a picnic table and that was the inspections area.'' In effect, he agreed that on September 7, ''I walked by that area and I observed Joyce sitting at the picnic table talking so someone . . . .''

Caulley testified that he had gone into one of the trailers where, through one of the windows, he watched Mills ''for sometime talking with this other person . . . .'' Business Unit Manager Brad Liebrecht's office was located in that particular trailer. Caulley testified that, after having watched Mills and the other employee through the window, he had ''asked Brad to also witness this fact,'' because it is ''[s]tandard practice for a manager to get another person as a witness, in case of discipline or whatever.'' Caulley never did explain why he had gone through these machinations instead of simply going out and asking Mills what she was doing at the table.

Nor did Caulley approach Mills later that day to make such an inquiry. Rather, he reported his observation to Spencer. The latter testified that, in the course of making that report, Caulley had said ''that [Mills'] work area was in Building 84 and she had no reason to be in the East Ramp.'' Like Caulley, instead of looking up Mills to find out why she had been there, Spencer ''recommended that [Caulley] write up a statement to [sic] the facts of what had happened and that Brad write one also'' While there was no representation that Liebrecht was unavailable, he was not called as a witness to provide a firsthand account of what he had observed on September 7. His statement, as well as that of Caulley, was produced. The most prominent aspect of them is their total omission of any reference to Smith in their descriptions of what Mills had been doing on September 7. Despite Caulley's admission when testifying that Mills had been ''talking with this other person'' at the table, Liebrecht's statement recites only that Mills ''WAS SITTING AT THE TABLE FOR AT LEAST TEN MINUTES,'' and Caulley's own statement takes this one step further, describing Mills as having been ''sitting at a table doing nothing.'' At no point did Caulley explain the discrepancy between that account and his testimonial concession that, in fact, Mills had been talking with another person while sitting at the table.

Because of those statements, Spencer and Jormat undertook another investigation, this time of Mills' September 7 presence on the east ramp. Afterward, Respondent made another preliminary decision to terminate her. However, its evidence pertaining to that decision was contradictory. During both this proceeding and the prior one, involving Sonnier, Respondent's officials consistently maintained that disciplinary decisions, including preliminary termination decisions, were the responsibility of line, not human resources, supervision, specifically of group leaders and business unit managers. But in this instance Spencer testified, ''I determined that we should do again a pre-termination advisory board hearing'' and ''I told [Caulley] what I had found and what I had recommended, and he agreed with me.'' In other words, Spencer portrayed himself as having made this decision and Caulley as having merely ratified in it.

During cross-examination Caulley confirmed that Spencer had been the official who had determined that a PTAB should be conducted regarding Mills' September 7 conduct: ''It was Spencer who initiated the PTAB in September . . . .''

During redirect examination, Caulley attempted to retract that admission by claiming that, by his testimony during cross-examination, he had meant that Spencer ''was the one that told Joyce what the [discipline] decision was.'' Aside from the fact that that explanation is nonsensical on its face, these two segments of Caulley's testimony also generated another inconsistency. For, during redirect examination, Caulley claimed that the September preliminary decision to discipline Mills had been made by ''Tony Cerda and myself.'' But that assertion was contradicted by Cerda who testified that, while he had been ''informed of that one,'' he had not been ''involved in that one until the PTAB.'' As a result, Respondent's evidence is conflicting as to who made the preliminary decision to terminate Mills that led to the September 14 PTAB.

As in August, that PTAB was conducted by Young, Cerda, and Kennedy. Similarly, as in August, the panel concluded that termination was not warranted and, further, the basis of its decision was one that seemingly should have been obvious by whoever had made the decision to proceed to a PTAB: ''Because a salaried employee [Clarke] had granted permission to be out of the work area,'' as Cerda put it. Indeed, while it turns out that Clarke had lacked authority to grant that permission, not only was that not apparent to Mills in September, but Young admitted that it had not been apparent at that time to Respondent's officials, either:

> but the question came up, ''Did she have authorization to be out of her area?'' We were struggling with—We have Team Leads in the plant and the question is: Is what authorization does a Lead have? Can a Lead say, ''You can leave the area.'' or is that a supervisory responsibility?
>
> We found out during the PTAB information that we didn't know, that what the investigation did reveal was that her Lead had been signing Joyce passes to leave the area. If her Lead had been signing her passes to leave the area, well, then, in her mind, she had authorization to leave. So, again, the Board said, ''Based on that, this is not an appropriate issue to terminate for.''

As pointed out in subsection III,C,3, supra, that conclusion would ordinarily end the PTAB panel's responsibility. Any further discipline, short of discharge, would be in the discretion of the employee's business unit manager and, more usually, group leader. However, in this instance, a different procedure was followed. For, Young testified that,

> because this has not been the fourth event in about six months of her wandering, the PTAB then made a decision and stated that a memorandum should be prepared by her supervisor clearly explaining what is meant by leaving the area and . . . how permission would be secured.

At no point did Young explain how it could be said that Mills had been ''wandering'' in either August or September. In the former month, she had been in the restroom for a period not shown to have exceeded the limitation in Respondent's earlier memorandum. And on September 7 she had been conferring with an inspector about a work-related problem. This was not the only problem that arose in connection with the memorandum prepared for Mills by Respondent after September 14.

In it, Caulley recites that it was prepared to ''clarify what constitutes 'permission' as noted in the DML document I issued you on 31 July 1990.'' Consistent with that statement, the memorandum does state that, ''Your Team Leader cannot give you permission to leave the area, nor can the Team Leader issue you an activity pass.'' However, this memorandum also imposes a significant additional restriction on Mills.

As set forth in subsection III,C,2, supra, the memorandum issued to Mills on August 1 stated that she would be subject to discipline ''the next time you are out of your work area for more than 15 minutes without permission . . . .'' However, the September memorandum wholly eliminates that 15-minute period: ''You are to remain in your work area at all times, excluding breaks and lunch, unless you need to use the restroom.'' None of Respondent's officials explained the reason for imposing a more stringent limitation on Mills in this memorandum. And no reason for it is disclosed by the other evidence presented by Respondent. Nor has it been shown that any other MD-11 program employee has ever been subjected to so stringent a restriction on movement. Of course, so severe a restriction lays a foundation for possible future discipline and, also, adds to the record of supposed past infractions and disciplinary action against Mills, even though neither PTAB resulted in implementation of the preliminary determination that led to those PTABs.

In fact, Mills bridled at signing the memorandum when it was presented to her on September 25. In the end, Respondent's officials agreed that it would not be put in her personnel file, although a copy would be retained by management for its files. All other copies were given to Bargaining Committeeperson Kennedy who, in turn, gave them to Mills.

Two other aspects of the September events are significant. First, as occurred with respect to the pre-September 14 preliminary decision to terminate Mills, and to the convening of a PTAB based upon that preliminary determination, Respondent's testimony was not consistent regarding the decision to prepare the memorandum. As quoted above, Young portrayed the decision as one made by the PTAB panel. But Cerda, Respondent's other official on that panel, did not corroborate that portrayal. Nor did the third member of that panel, Committeeperson Kennedy. In fact, although Spencer claimed that he had been ''informed by Dave Young and Roy Kennedy that they had agreed with [the memorandum's] contents,'' Kennedy refutted that claim, testifying that he had not been involved with the memorandum until September 25. On that date, testified Kennedy, he had ''[b]y accident'' entered the office and had been informed about it by Mills. Indeed, it is undisputed that it had been Kennedy's objection to the memorandum that had ultimately led to the decision not to place it in her personnel file.

Second, Spencer and Kennedy agreed that, as the dispute involving the memorandum had unfolded on September 25, Mills at one point had telephoned Ken Ericksen—the official ''in charge of labor relations,'' testified Spencer. Mills testified that when she had described what had been occurring ''all the way back to the PTABs,'' Ericksen had ''said he didn't know anything about that, that didn't sound right to him, but he'd look into the matter.'' Ericksen was never called by Respondent, although it did not represent that he was not available to refute Mills' description of their conversation, had that been his disposition. As a result, it is undisputed that what occurred in connection with the August and September PTABs, as well as the September memorandum, ''didn't sound right'' to the official in charge of Respondent's labor relations. Given the conflicting and uncorroborated accounts described above, and the seeming lack of candor with which those accounts were advanced by Respondent's officials when testifying, it is difficult to disagree with Ericksen's assessment.

5. October 24 termination of Mills

The hearing arising from Sonnier's charges was scheduled to, and did, commence on Thursday, October 25. As described in subsection III,B, supra, it is undisputed that during the preceding week—on Wednesday, October 17 or on Thursday, October 18—Mills had notified her group leader, Caulley, that she was to be called as a witness during that hearing. So far as the evidence discloses, Mills had been the lone employee to provide such notice, of intent to testify at the hearing, to Respondent.

After lunch on Friday, October 19, most, if not all, department 500 employees, including Mills, were relocated to the west ramp, approximately a mile from building 84, to perform work on planes whose completion was behind schedule. Incident to that relocation, then-Group Leader William Halsey was placed in charge of all department 500 electricians, including Mills, while Caulley was placed in charge of all that department's structural mechanics. As a result, although DeLeon continued to serve as her team leader, Caulley ceased to be Mills' group leader and Cerda ceased to be her business unit manager.

The department 500 electricians worked on the west ramp for the remainder of October 19, as well as on Saturday, October 20 and, to the extent pertinent here, from Monday, October 22 through Wednesday, October 24. Because Halsey was scheduled to be absent on Monday, October 22, and on Tuesday, October 23, he was temporarily replaced as the electricians' group leader on those 2 days by Gene Kelly, another group leader whose business unit manager was Austin Shauntz.

As noted in footnote 6, while they had worked in building 84, at least some department 500 employees had lockers located there. During the morning of Wednesday, October 24, Mills returned there from the west ramp to pick up a special wrench from her locker. But when she went to the locker, she discovered that all of her belongings had been removed from it and that a blue sticker, bearing the name Victor Martin, had been affixed to it. In the course of trying to locate her possessions, Mills spoke with several persons, including Group Leader Bill Moody, then-Senior Manufacturing Coordinator Jennings, Martin and Department 550 Group Leader Edward Balthasar. She discovered that, when approached by Martin who had sought a locker, Balthasar had directed removal of her possessions from the locker and, then, had assigned it to Martin. However, while her possessions had been placed in a box which had been set on top of a bank of lockers, the box no longer was there when Balthasar looked for it during the morning of October 24.

After lunch that day Mills again looked for Balthasar in building 84 to ascertain if he had located her belongings from the locker. In the course of doing so, she stopped off in a restroom there. While in there, she was told that a man was waiting for her outside. She went out and, there, met Halsey who informed her, admittedly for the first time, that he was her group leader. He directed her to return to the west ramp. When she did so, he informed her that they would be going to human resources. There they met with Spencer and Jormat. Mills was informed that she was being terminated for having been out of her work area.

The foregoing facts are virtually the only undisputed ones in connection with Mills' termination. She testified that, after arriving on the west ramp on October 19, she had begun working on ship 456, a plane scheduled for delivery to Korean Air Lines, and had worked on it steadily throughout Wednesday, October 24, save for the period of time that day when she had returned to the locker in building 84. As to that trip, she testified that, during that morning, she had encountered a work-related problem that she believed could be solved with a special wrench that had been made for her some months earlier and that she had kept thereafter in her locker. Mills testified that no one told her that employees needed permission to return to their building 84 lockers from the west ramp. Moreover, she testified that, before leaving the west ramp, she had advised Electrical Aircraft Mechanic Jamaal Ali, with whom she had been working on ship 456, where she was going. She also testified that she had gone to building 84 in the company of Electrical Installer Tammy Syphax, who also had been working on ship 456 and was going to her locker in building 84 that morning.

In fact, Syphax confirmed that she had returned to her own locker that morning in company with Mills. Further, Ali agreed that, during the morning of October 24, Mills had told him ''she's going to Building 84 to pick up her tools, which was located in her locker.'' Similarly, Balthasar corroborated Mills' account that, when she had located him, she had inquired about the disappearance of her personnel possessions from the locker. Moreover, he agreed that they had been unable to locate the box into which those belongings had been placed. However, Respondent contends that Mills should not have been in building 84 on October 24 without having first secured permission to go there from her group leader.

Furthermore, in defending its termination of Mills, Respondent's officials proceeded on a much broader front than one confined to the events of October 24. For, they contended that while Mills had reported for work during every work day from the afternoon of October 19 through 24, she had done no work whatsoever during those days—that she had simply disappeared between clocking in and out—and that they had been unable to locate her. However, in the course of proceeding on so broad a front, Respondent's officials advanced a veritable quagmire of uncorroborated, inconsistent and contradictory evidence that, in the end, served only to illustrate the impression of unreliability conveyed when they were testifying about the purported motivation for Mills' termination. Indeed, so extensive was the confusion among the accounts of those officials that it is even difficult to present an organized description of Respondent's defense to that termination. Nevertheless, that defense can be generally divided into two areas: Mills' work location after relocation to the west ramp and, second, the events of October 24 that culminated in her termination.

Regarding the first area, Respondent contends generally that Mills should have been working on ship 455, a Finn Air one, and that she could not be found there at any time on and after October 19. Of course, as described above, the latter fact is not disputed, because Mills testified that she had been working on Korean Air's Ship 456 on each workday between that date and October 24. With respect to how she came to work there, she testified that the department 500 employees had not been notified that they would be relocated to the west ramp until before lunch on October 19, when they were instructed to report there after lunch that same day. Then, testified Mills, when they did report to the west ramp, ''everything was confused out there. It was so many people out there they were running crazy.'' She testified that, as a result, ''the lead told us to work on either ship that we wanted to,'' and that she had begun doing electrical work on ship 456, continuing to do so on succeeding workdays.

By the time that the General Counsel's case-in-chief had been completed, the evidence showed that the relocation to the west ramp had been a sudden one, with resultant confusion when the employees had arrived there. Those facts that tended to support Mills' account of events during the afternoon of October 19. However, Kelly, the group leader who temporary filled in for Halsey on October 22 and 23, contradicted that description. He portrayed the relocation as a relatively organized one that, inferentially, would not likely have led Mills to begin working wherever she saw a need for electrical work to be performed. For, Kelly testified that the relocation of department 500 had occurred ''basically over the course of, let's say, about three or four weeks, almost all the department moved. I'd say about 90 percent of it anyway.'' Yet, that portrayal of an orderly relocation was contradicted even by the accounts of Respondent's other officials. Halsey testified that, ''on Friday, I believe was the 19th, I was told that there's a rumor going around that we're moving to the west ramp. Department 500 was [and] I asked my boss Tony Cerda . . . if the rumor was true.'' It was after that, testified Halsey, that he was informed that the relocation would occur ''right after lunch'' that very afternoon.

As had Halsey, Cerda confirmed Mills' description of a suddenly announced and implemented relocation, thereby

contradicting Kelly's portrayal of an orderly one that had been implemented over an approximately 1-month period:

> All the Business Unit Managers from Department 500 in Building 84 were instructed to go out to the west ramp at 9:30; it was either 9:30 or 10:00 for a meeting with Mr. Lancaster, Mr. Kerr, Mr. Davez and they informed us that at noon that day, right after lunch, they wanted us to gather all the employees and move them out to the west ramp to support the year end deliveries.

Similarly, Caulley testified that he had not been informed of the relocation until ''[m]y Business Unit manager had approached me in the early part of the day and had advised me that at lunch time, or right after lunch, that we'd bring all the employees together . . . that the whole department would be moving to the west ramp.''

The descriptions of Halsey, Cerda and Caulley tend to support Mills' account of a confused situation on the west ramp that afternoon that, in turn, led to a disorganized method of work assignments, culminating in her commencing work on ship 456. In fact, Halsey not only agreed that there had been confusion on the west ramp that afternoon, but he testified that confusion there had continued into the following day. Moreover, his description of the initial work assignments there tended to further corroborate her testimony. For, Halsey testified that Caulley had told the first group of electricians arriving on the west ramp simply ''to grab some papers in the books and go to work.'' Consequently, Respondent's own evidence tends to support Mills' account of the ad hoc assignment process that had led her to begin working on ship 456.

In connection with her termination 5 days later, Halsey and Caulley prepared statements for Respondent in which each official claimed that Mills should have been working on ship 455. In addition, when he testified, Cerda also claimed that Mills should have been working on that particular ship, instead of ship 456. But Cerda did not claim that he had assigned her to work there and he did not claim that either Caulley or Halsey had told him that Mills had been assigned to work on ship 455. More significantly, neither Caulley nor Halsey testified that he had told Mills that she was assigned to work on ship 455. To the contrary, Halsey admitted that he had not even spoken to Mills until the following Wednesday, when he had directed that she be summoned from the building 84 restroom. Nonetheless, in an apparent effort to buttress the defense that Mills had been assigned to a plane different from the one on which she claimed to have actually worked, each of these officials advanced accounts that, in the end, served only to undermine the credibility of each one.

In effect, Cerda claimed that Mills should have been working on ship 455, because that was the only one on the west ramp on which the department 500 employees were supposed to be working immediately following their relocation. Thus, testified Cerda, ''We micro-managed the aircraft'' at that time by ''receiving our direction from upper management,'' with the result that ''Finn Air[] was the first one that we went out there to support'' and ''that was our first delivery aircraft for the MD-11 program and everyone moved out there to support that aircraft.'' However, that testimony was flatly contradicted by Halsey and Kelly, the two group leaders who had immediately supervised west ramp electrical work by department 500 employees between October 19 and 24. The former testified that of the five uncompleted planes parked on the west ramp on October 19, ''we weren't assigned to the other two, so that left three and that was what I was assigned to.'' As to those three planes, Halsey identified one as ship 455, a Finn Air, and another as ''456, which is Korean Air.'' Similarly, Kelly testified that when he had filled in for Halsey as group leader on October 22 and 23, the latter's crew had been assigned to one Finn Air plane and two Korean Air planes. Consequently, both group leaders contradicted Cerda's explanation that Mills should have been working on ship 455, because that was the only aircraft on which the department 500 electricians should have been working immediately after their relocation to the west ramp.

Like Cerda, Kelly also advanced a description of the work, albeit a different one, that, if accepted, would lead to the conclusion that Mills could not have been working legitimately on ship 456 between October 19 and 24. As noted in the immediately preceding paragraph, both Halsey and Kelly testified that there had been two Korean Air planes parked on the west ramp between those dates and, moreover, Halsey identified ship 456 as a Korean Air plane. However, while Mills testified that she had worked on ship 456 which had been parked in position 10, adjacent to lot 5 at Respondent's Long Beach facility, Kelly contradicted that testimony by testifying that ship 456 ''would have been at position five.''

In so testifying, Kelly relied on two purported facts: First, that he was familiar with ship 456, because he assertedly had worked on it ''in about January or February of this year, 1991'' and, second, that the other Korean Air plane had been ''across from where [position] 10 is; it was what's called fuel—fuel pit area'' and that ''planes in the fuel pit, generally you hardly ever work the plane because they're doing fueling and they're [sic] certain functions that you can't do well . . . .'' Kelly's first purported fact tends to be contradicted by the very purpose of relocating department 500 to the west ramp. That is, according to Respondent's other officials, the purpose had been to complete assembly of the aircraft already there as soon as possible. There is no evidence whatsoever that assembly of any one of those planes had still remained uncompleted 3 or 4 months later, in January or February 1991.

Kelly's second purported fact was not corroborated by any other witness and tended to be contradicted by quite a few of them. Mills enumerated several other employees who had been working on ship 456 between October 19 and 24. Three of them appeared as witnesses and corroborated her account as to their work location and, furthermore, as to the location of ship 456 during that period. Thus, Structural Mechanic Fredwill Hernandez testified that his group leader, Ed Cleveland, had assigned him to work on ship 456 in position 10 on October 23, when Hernandez had returned from vacation. Similarly, Syphax testified that her team leader, Gregg Stipp, had assigned her on October 24 to work on ''probably a Korean'' plane located at the position ''closest to Lot 5.'' Both testified that Mills, also, had been working on that ship. And, Ali testified that, following the relocation, he and Mills had

worked as partners on ''Korean Airlines, Ship 456,''[8] then located ''in the fuel pit area. I think it's number 10 because it's close to lot 5. It was right next to the lot.'' In short, nothing supports, and all other evidence contradicts, any claim by Kelly that Mills could not have been working on ship 456 because of its location between October 19 and 24.

Unlike Cerda and Kelly, Halsey took a more direct approach to the purported work assignment of Mills. Although he conceded that he had never spoken to her about a work assignment between October 19 and 24, he blamed that on her failure to attend team meetings that he had conducted. Thus, he testified that at 2:30 p.m. on October 19, he had conducted a meeting of the employees who by then were in his group. At that meeting, testified Halsey, he had taken attendance, had announced the new ''start and stop times'' for the west ramp and where tool boxes could be stored, and had ''made some assignments to people who didn't have assignments yet and got the status of the other people who were still doing assignments when they first got there.'' Moreover, Halsey testified that he had also announced ''that there would be [another] meeting the next morning'' and that, in fact, he had conducted one on October 20 ''[a]t the beginning of the shift.'' As had Halsey, Kelly claimed that he had participated in team meetings with Halsey's crew when he had temporarily served as their group leader on October 22 and 23, but that Mills had not attended any of them.

The principal difficulty with these accounts of purported team meetings is that no other witness—supervisor or employee—corroborated Halsey's and Kelly's accounts that they had been conducted on October 19, 20, 22, and 23. To the contrary, asked during cross-examination by Respondent if he had attended a morning team meeting on Saturday, Monday, Tuesday, or Wednesday following Department 500's relocation to the west ramp, Ali testified: ''No, because we didn't have them then, not in the morning.'' Furthermore, both Caulley and Halsey admitted that they had never informed Mills that the latter had replaced the former as her group leader. Consequently, even had Mills been aware that Halsey was conducting team meetings of employees whom he supervised following the relocation, there is no basis upon which she could have concluded that she should attend.

That latter point may have occurred to the two group leaders, for each one testified that he had unsuccessfully searched through the west ramp planes for Mills after she had not appeared at team meetings. But, though each one claimed to have asked other employees during the course of searching if any of them had seen Mills, no one corroborated the two group leaders' accounts of that questioning. To the contrary, while Halsey testified specifically that he had asked Ali about Mills on October 20, Ali denied that he had ever seen Halsey on ship 456 and, further, denied having ever been asked by Halsey if he (Ali) had seen Mills. Moreover, not only did Ali similarly deny that he had seen Kelly on ship 456, but Hernandez, who had been assigned there upon returning to work on October 23, denied that Kelly or anyone else had asked him that day if he had seen Mills.

In fact, in advancing the description of his asserted searches, Halsey created an added difficulty for himself. During cross-examination, he testified that he ''went and checked the airplanes'' for Mills ''just before break'' around two o'clock on October 19. However, during direct examination, Halsey testified that he had conducted his first team meeting that afternoon at 2:30 p.m. Accordingly, to accept his testimony on cross-examination would be to conclude that he had searched for Mills even before the asserted team meeting at which her absence had purportedly led him to conduct a search for her—or to conclude that, for some undisclosed reason, he had anticipated that she would not be attending that team meeting and had chosen to search for her even before the meeting had been conducted. Neither alternative makes any sense.

In sum, Mills testified, credibly and with corroboration, that she had worked steadily on ship 456 during the workdays following the relocation. By contrast, the testimony given to support Respondent's contention that Mills had done no work after the relocation was not advanced credibly. Nor is Respondent's case strengthened by examination and comparison of the various accounts given in connection with the events of October 24.

Mills testified that, as she worked on ship 456 during the morning of October 24, she had discovered that there was an area into which she could not insert her hand because it was too confined. She testified, ''I had a wrench that was specially made from a guy that was in the tool crib years ago . . . made specially to get behind things'' in her Building 84 locker and she felt it could be used to reach into the confined area. Consequently, testified Mills, she decided to go to her locker and get the wrench. But, before leaving the west ramp to do so, Mills neither obtained an employee activity pass nor looked for a supervisor to notify him/her that she was leaving for building 84. Accordingly, it does appear that Mills violated the terms of the restriction on her movement imposed by the most recent memorandum issued to her in connection with the September PTAB. Yet, the fact that the memorandum resulted from an unlawfully motivated personnel action serves to preclude Respondent from relying upon its restriction as a basis for terminating Mills. In addition, certain other considerations independently undermine any contention that Respondent truly terminated Mills for having returned to her locker in building 84 during the morning of October 24.

Although Respondent's officials claimed that, following the relocation, building 84 was not an extension of the west ramp, Caulley acknowledged that employees had not needed permission to go to their lockers during the time that they

[8] Asked to describe more specifically where they had worked on that plane, their accounts appeared to diverge. Mills testified that she had ''worked in the aft over-ceiling panel'' on Saturday, ''in the forward cabin'' on Monday and in the ''cabin aft'' on Tuesday. Ali testified that he and Mills had worked in the ''Forward and E Barrel section of the aircraft'' during those days: ''The middle over wing, so it was the middle over wing forward.'' He denied having worked in the aft cabin with Mills on any of those days. However, any disparity that might be argued exists in those accounts tends to be mitigated, if not totally eliminated, by the relativity of those areas in an aircraft under construction. For example, asked if the E barrel section is in the forward part of the plane, Ali answered, ''It can be considered that way because it's not actually—well, yeah, because it's middle and half way in—middle half and then you have the aft cabin. We were working the middle—the forward and middle . . . .'' In other words, in context, the terms forward, middle and aft seem to be ambiguous, relative one whose meaning depends upon the perspective of the particular employee-observer, rather than precisely definitive ones.

had worked in building 84. Accordingly, absent some instruction to the contrary, after the relocation it would not have been illogical for employees to believe that they could continue doing so without first securing permission or a pass. Indeed, there was testimony that employees had done so. However, both Caulley and Halsey claimed that employees had been told that they were not free to return to building 84. The former testified, ''we told everyone; we, myself, and the other Group Leaders that if they left the ramp for any reason, they'd need permission,'' and Halsey testified that, at the Saturday morning team meeting, he had announced ''that passes were needed to go'' to building 84.

Of course, since Halsey admitted never having seen Mills prior to October 24, he obviously had not told her that she needed a pass or permission to return to her locker. Similarly, Caulley conceded that he had no recollection of having told Mills that she would need permission to return to her locker from the west ramp. In fact, there was no corroboration for either group leader's assertion that such prohibitory statements had been made by them to the relocated Ddpartment 500 employees. To the contrary, Ali testified that he had returned to his locker during days succeeding the relocation without first getting a pass or other form of permission to do so. Of perhaps greater significance to the events of October 24, Mills was accompanied from the west Ramp to building 84 that morning by Syphax who also had not bothered to secure a pass or other permission, but who was also going to her locker in building 84. Further, though Balthasar admitted that ''[a] girl named Tammy'' had been with Mills when the latter spoke with him on October 24—and, therefore, conceded notice to Respondent that Mills had not been the lone department 500 employee in Building 84 that morning—Respondent's officials conceded that they had made no effort to ascertain if Syphax had secured a pass or permission to be away from the west ramp.

Consistent with her explanation for having gone to building 84 during the morning of October 24, it is undisputed that Mills did go to her locker and, upon discovering its contents had been removed, undertook a search for her possessions. As set forth above, in the course of trying to locate Victor Martin, whose name appeared on the sticker newly affixed to the locker and who was not known to Mills at that time, Mills spoke with Group Leader Moody and then-Senior Manufacturing Coordinator Jennings. She testified that Jennings had used a computer to ascertain that Martin worked in department 550 and, accompanied by Syphax, that she had gone to the area where that department's employees were working and had located Martin.

Both Mills and Syphax testified that Martin informed Mills that his supervisor, Group Leader Balthasar, had emptied the locker and, then, had assigned it to him. He pointed out Balthasar and the two women asked him about the items removed from the locker. Mills and Syphax testified that Balthasar admitted having emptied the locker and having placed Mills' possessions in a box which he had then placed on top of the bank of lockers. But when they looked there, the box was missing. Both Mills and Syphax testified that Balthasar then suggested that Mills come back after lunch, by which time he would probably have been able to locate the box. He also informed Syphax that she would need an undated blue sticker for her locker if she wanted to retain it. According to Mills and Syphax, they then returned to the west ramp, arriving around 10 o'clock, and worked on ship 456 continuously until the 11:30 p.m. lunchbreak, when they returned to Balthasar's area of building 84. Unable to locate him, they stopped off in the restroom after lunch and it was from there that Mills was summoned by Halsey.

In several respects Respondent's officials assailed this seemingly reasonable account by Mills and Syphax. But in the process they made more trouble for themselves than for the two employees. For example, Jennings provided Respondent with a statement, reciting that he assertedly ''OBSERVED JOYCE MILLS WANDERING AROUND BLDG 84 SEVERAL TIMES BETWEEN 8:30–11 A.M.'' on October 24. However, during direct examination he described only a single instance of having encountered Mills that morning. Taking advantage of questioning during cross-examination, he did then testify that one encounter with her had occurred between 8 and 9:20 a.m., but that he had also seen Mills in Building 84 ''probably around 10:00 o'clock and then again around 11:00 o'clock.'' Yet, his testimony at that point was vague and appeared intended to protect the account in his statement, rather than to relate events that he had actually perceived.

As set forth above, Mills testified that Jennings had used a computer to aid her in locating Martin's work location. In his statement, Jennings recited that he had spoken to Mills on October 24. But he stated only that he had asked if she was supposed to be on the west ramp and that she had replied that ''SHE WAS LOOKING FOR HER TOOLS.'' Of course, such a response is perfectly consistent with Mills and Syphax's explanation of their trip to building 84 on October 24. Jennings expanded on that written account during direct examination, adding that he had asked ''what she was going to do with those'' and that Mills ''[j]ust laughed and just left.'' Jennings never bothered to explain what would have motivated him to ask an employee what she intended to do with tools for which she was searching. More importantly, during cross-examination, he, in effect, expanded further on his account of this conversation with Mills on October 24, in the process giving testimony that further corresponded to her description of it. For, after first claiming that he could not recall if Mills had asked if he knew an employee named Victor Martin, he then conceded that it ''could be'' that he had used the computer to assist Mills in locating Martin. Indeed, he ultimately did admit that, ''I remember her asking me about somebody.'' Consequently, by the completion of his testimony, Jennings' account of the events of October 24 corresponded less with that in his written statement than with that of Mills.

Of course, regardless of the unreliability of Jennings' description(s) of his October 24 exchange with Mills, it still could be concluded that Respondent acted lawfully if it relied in good faith upon the truncated version in his statement when deciding to terminate Mills. But, in fact, the record demonstrates unequivocally that it had not done so. For, although that statement bears the date ''10–24–90,'' Jennings admitted that he had not prepared it until ''October 26th, two days after the day it happened.'' Further, while he claimed that on October 24 he had ''mentioned [his asserted encounter(s) with Mills earlier that day] to Tony Cerda,'' Cerda never corroborated that testimony—did not testify that he had received such a report from Jennings at any point on October 24. Nor, if he had received such a report from Jen-

nings, did Cerda claim that he had related it to any other official on October 24.

In another respect, Balthasar challenged Mills and Syphax's account on several counts. But, in doing so, he generated more problems for Respondent's defense than help lent to it. In describing the contents of the locker, he claimed that they had been inconsequential items, thereby inferentially refutting Mills' description of a special wrench having been among them. Indeed, he testified that, when she had first asked him about the whereabouts of those items, Mills had referred to them merely as ''the stuff'' that had been in her locker. Yet, in the statement that he gave to Respondent, he had conceded that Mills ''ALSO SAID HER TOOLS WHERE [sic] IN THAT LOCKER . . . .'' Moreover, Balthasar testified that he had not been the person who had emptied the locker. Rather, he claimed that it had been Martin who had done so and who had placed the removed items in the box. However, though it did not represent that he was unavailable, Respondent never called Martin to provide a firsthand account that might have refutted Mills' testimony that a wrench had been among the locker's contents. In short, Respondent presented no reliable evidence that there had not been any tools, specifically a specially made wrench, in the locker when it had been emptied.

Balthasar's statement has added significance. In it he stated that his exchange with Mills had occurred ''AROUND 10:30,'' thereby inferentially contradicting the testimony of Mills and Syphax that they had returned to the west ramp at 10 o'clock. But when testifying, Balthasar conceded that he was uncertain of that estimate and that, to the contrary, the exchange that day could have actually occurred, ''Anytime between [the 9:30] break and [the 11:30] lunch.''

As is true of the statement by Jennings, Balthasar's statement bears the date ''10–24–90.'' And Spencer testified that before Mills' termination that day, he had spoken with Balthasar about what had occurred earlier that morning. However, Balthasar disavowed the date written on his statement, by admitting that he had not actually prepared the statement until ''a day or two later,'' and, also, ''I didn't date it.'' And he contradicted Spencer by testifying that it had not been until ''a couple of days after the incident'' that Spencer or Young had ''asked me if I'd talked to Joyce Mills about a locker and I told them, yeah, and they [sic] asked me to write a statement about it.''

In the final analysis, rather than lending support to Respondent's defense, these statements by its officials, and the circumstances of their preparation, plagued that defense with ongoing contradictions. For example, Spencer testified that during the morning of October 24 Caulley and Halsey had together reported that Mills could not be found in her work area, nor had she been seen there since the relocation. Spencer further testified that, as a result of that report, ''at that time I had Halsey and Caulley put their statements in writing . . . .''—''I had them write statements then, at that time.'' Halsey agreed that he had prepared a written statement during that meeting with Spencer. But, Caulley's account of how he came to prepare his own statement contradicted that of Spencer:

> I'd seen Joyce Saturday in Building 84 and I knew that she was supposed to be on the west ramp so when I came back to the west ramp after I finished my business I told Mike, so that—Mike Halsey—and he later came back and asked me if I'd write up a statement to that effect.

Furthermore, in the course of providing that testimony, Caulley, himself, created another contradiction. For, he testified that he had prepared that statement on October 24 based upon a request made by Halsey ''the day before.'' However, October 23 had been 1 of the 2 days that Kelly had been filling in for Halsey due to the latter's absence from work. Accordingly, Halsey could not have made such a request of Caulley on October 23, as Caulley testified. When it was pointed out that Halsey could not have made such a request on that date, a seemingly befuddled Caulley lamely testified, ''He may not had [made the request on October 23]: I can't remember.''

Among the statements produced by Respondent was one by Cerda, reciting that ''On 19 Oct 90 At Approx. 1330 hrs. I . . . observed Joy Mills Walking North On the Roadway between Bldg. 12 & Bldg. 2.'' Spencer testified that this statement had been brought by Caulley and Halsey when they had first come to his office during the morning of October 24. Yet, while he agreed that he had prepared that statement, Cerda never claimed that he had done so as early as midmorning on October 24. Nor is there any independent basis in the record for inferring that he likely would have done so, especially given the above-described incidents of back-dated statements. In fact, Cerda's only testimony regarding the incident described in his statement is that he had reported his purported sighting to Caulley and August Schauntz, as well as to Halsey, during the afternoon of October 19, ''not only to inform them, but also ask them, had they given Joyce permission to be out of the assigned work area.'' However, neither Caulley nor Halsey corroborated that account of Cerda. And Schauntz was never called as witness by Respondent, though it never represented that he was not available to it as a witness.

Also included among the statements was one by Moody. He was never called by Respondent to describe when and under what circumstances he had prepared it. However, the description in that statement tends to confirm Mills and Syphax's account that the former had been searching for her possessions in building 84 during the morning of October 24: ''JOYCE MILLS WALKED UP ME AND ASKED ME IF I KNEW AN EMPLOYEE BY THE NAME VICTOR [MARTIN?] IN DEPT. 550.''

One statement definitely prepared on October 24 had been that of Duvardo, the individual to whom Spencer had mentioned Sonnier in the course of securing that statement, as described in subsection III,B, supra. Although, unlike officials such as Balthasar and Jennings, Duvardo had not been involved in any incidents pertaining to Mills, and had never supervised her, he claimed that he had been asked by Caulley ''probably several months ago'' to report any sightings of Mills outside of her work area and, moreover, that similar requests were ''common practice among supervision if there is a person that they are having difficulty with . . . .'' However, Caulley did not corroborate Duvardo's assertion of a request to report sightings of Mills. Further, no evidence was presented to support Duvardo's assertion of a ''common practice among supervision'' of requests for such reports. Indeed, even assuming that such a practice existed,

at no point did Respondent explain why Duvardo would have been singled out as the object of such a request with respect to Mills.

In the end, the decision to terminate Mills was attributed to Halsey. With respect to it, he testified,

> It looked to me that she'd been disciplined on the same problem several times before and had gone through several steps as far as she'd been reprimanded verbally, with a written, a disciplinary layoff, and I, in my opinion, that was chance enough to know what the rules were and what was expected and then also with this memo that she received, I saw no point in giving any more chances.

In other words, Halsey testified that Mills' termination had been motivated as a direct result of Respondent's prior discipline of Mills—a culmination of a series of prior events.

6. Conclusion

Of course, if the prior discipline of Mills had been unlawfully motivated, their subsequent motivation of the decision to terminate her, as Halsey claimed had occurred, renders that termination unlawfully motivated, as well. As set forth in subsection III,B, supra, the General Counsel has established a prima facie showing that those prior personnel actions—the disciplinary layoff of May 22, the decision-making leave of July 31, and the August 9 and September 14 pretermination advisory board proceedings—directed against Mills had been unlawfully motivated. The General Counsel has further made a prima facie showing independent of those prior disciplinary actions, that the termination of Mills had been unlawfully motivated.

Respondent has failed to satisfy its burden of going forward with credible evidence that its officials would have taken any of those actions against Mills absent her participation in the investigation and hearing of a charge against it. Its MD-11 program officials did not appear to be testifying candidly. As reviewed in the proceeding subdivisions of this subsection, that appearance is confirmed by a review of the record of their oft-times uncorroborated, many times inconsisent and frequently contradictory testimony and other evidence. Therefore, a preponderance of the evidence supports the allegations that those officials, and thus Respondent, violates Section 8(a)(4) and (1) of the Act by disciplining Mill from May through September in an effort to dissuade her from continuing to participate in investigating and processing through hearing a charge against Respondent and, when that dissuasion proved ineffective, by terminating her because of her disclosed intention to testify in the hearing arising from that charge, thereby retaliating against Mills and serving notice on other employees that a like consequence could befall them if they engaged in similar action.

CONCLUSION OF LAW

By imposing a disciplinary layoff and a decision-making leave on Joyce Mills, by subjecting her to pretermination advisory board proceedings, and by terminating her, Douglas Aircraft Company, a Component of McDonnell Douglas Corporation committed unfair labor practices affecting commerce in violation of Section 8(a)(4) and (1) of the Act, but it has not been shown by a preponderance of the evidence to have done so for motives proscribed by Section 8(a)(3) of the Act, nor for ones independently proscribed by Section 8(a)(1) of the Act.

REMEDY

Having found that Douglas Aircraft Company, a Component of McDonnell Douglas Corporation engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to remove from its files all records of disciplinary action imposed on Joyce Mills on and after May 1, 1990, and, further, to offer her immediate and full reinstatement to the position of MD-11 program electrical installer, dismissing, if necessary, anyone who may have been hired or assigned to perform the work from which she was unlawfully terminated on October 24, 1990. If that position no longer exists, it shall be ordered to reinstate Mills to a substantially equivalent position, without prejudice to her seniority or other rights and privileges. It shall be further ordered to make Mills whole for any loss of pay she may have suffered because of any of the unfair labor practices directed against her, with backpay to be computed on a quarterly basis, making deduction for interim earnings, *F. W. Woolworth Co*., 90 NLRB 289 (1950), and with interest to be paid on the amounts owing as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Douglas Aircraft Company, a Component of McDonnell Douglas Corporation, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Subjecting employees to disciplinary layoffs, decision-making leaves and pretermination advisory board proceedings, and discharging employees because they participate in the investigation of unfair labor practice charges and give testimony under the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Joyce Mills mmediate and full reinstatement to the position of MD-11 program electrical installer, dismissing, if necessary, anyone who may have been hired or assigned to that position on or after October 24, 1990, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffere as a result of her discriminatory termination, or of any other unfair labor practices directed against

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

her on and after May 22, 1990, in the manner set forth above in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Remove from its files any and all documents and an other references to disciplinary action against Joyce Mills imposed on an after May 1, 1990.

(d) Post at its Long Beach, California facility copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as its alleges violations of the Act not found here.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''